

CHAPTER 48-02 CONSTRUCTION

48-02-01. Definition of governing board. Repealed by S.L. 1995, ch. 443, § 29.

48-02-02. Prerequisite to building and repair by contract - Exceptions. Repealed by S.L. 1995, ch. 443, § 29.

48-02-03. Method used in securing bids - Emergency waiver. Repealed by S.L. 1995, ch. 443, § 29.

48-02-04. Contents of advertisement. Repealed by S.L. 1995, ch. 443, § 29.

48-02-05. Plans and specifications - Place of filing. Repealed by S.L. 1995, ch. 443, § 29.

48-02-05.1. Bid requirements and acceptance. Repealed by S.L. 1995, ch. 443, § 29.

48-02-06. Opening bids - Award of contract - Bond required. Repealed by S.L. 1995, ch. 443, § 29.

48-02-06.1. Public contract to contain a fuel cost line item and a fuel cost adjustment clause. Repealed by S.L. 1995, ch. 443, § 29.

48-02-06.2. Bonds from contractors for public improvements. A governing body, as defined in section 48-01.1-01, authorized to enter into a contract for construction of a public improvement in excess of one hundred thousand dollars shall take from the contractor a bond before permitting any work to be done on that contract. The bond must be for an amount equal at least to the price stated in the contract. The bond must be conditioned to be void if the contractor and all subcontractors fully perform all terms, conditions, and provisions of the contract and pay all bills or claims on account of labor and materials including supplies used for machinery and equipment, performed, furnished, and used in the performance of the contract, including all demands of subcontractors. The requirement that bills and claims be paid must include the requirement that interest of the amount authorized under section 13-01-14 be paid on bills and claims not paid within ninety days. The bond is security for all bills, claims, and demands until fully paid, with preference to labor and material suppliers as to payment. The bond must run to the governing body, but any person having a lawful claim against the contractor, or any subcontractor, as provided in this chapter, may sue on the bond.

48-02-07. Allowance and payment of estimates - Investment of retainage. At least once in each calendar month during the continuance of work upon any public building or erection begun and carried on under the provisions of this chapter, the governing board, or a committee thereof duly authorized by the board for that purpose, shall meet and receive and consider estimates furnished by the supervising architect or the superintendent of construction of such building or erection, and shall allow such estimates in an amount of the estimated value of the labor and material furnished upon such contract, and of the material then upon the ground for use in the construction thereof, subject to retentions as follows: ten percent of each estimate presented until such time as the project is fifty percent completed, with no further retainage on estimates during the continuance of the contract. The governing board may, however, upon completion of ninety-five percent of the contract according to the estimates, pay to the contractor ninety-five percent of the amount retained from previous estimates. The remaining amount retained shall be paid to the contractor in such amounts and at such times as are approved by the supervising architect or superintendent of construction, with final payment of all moneys due to the contractor to be made immediately following completion and acceptance of the project. If no supervising architect and no superintendent of construction is employed upon such contract, the contractor, at the end of each calendar month during the continuance of work under any such

contract, may furnish to such board or public body in charge of such work like estimates which shall be allowed in like manner. Said board or committee thereof, immediately after considering and allowing any such estimate, shall certify and forward the same to the county auditor, city auditor, or other official having the power to draw warrants, who forthwith shall draw that official's warrant upon the proper fund and transmit the same promptly to the contractor entitled thereto. On the amounts of estimates retained, as provided herein, the governing board, authorized committee, or public body in charge of such work may invest or deposit said retained amounts in any financial association or institution in North Dakota, so that the contractor's money will be earning interest or dividends for the benefit of the contractor. Any amounts so invested or deposited shall remain in the name of the governing board, authorized committee, or public body in charge of such work until final payment of all money due to the contractor is to be made. Further, no contractor shall use such account in any manner whatsoever until released and received by the contractor upon completion of the contract.

48-02-08. Estimate - Failure to certify - Rate of interest. In case the board or committee mentioned in section 48-02-07 shall fail or neglect to certify any estimate allowed or final payment upon completion and acceptance, or the proper official shall neglect or fail to issue a warrant as provided in section 48-02-07, for a period of more than thirty days from the date of such estimate or completion date, then said estimate or final payment shall draw interest from its date at the rate per annum of two percentage points below the Bank of North Dakota prime interest rate as set thirty days from the date of such estimate or completion date until the issuance of a proper warrant therefor. Such interest shall be computed and added to the face of said estimate or final payment by the officer required to issue such warrant, shall be included in the warrant when drawn, and shall be charged to the fund upon which payment for the contract is to be made. No payment for, or on account of, any contract made under the provisions of this chapter shall be made except upon estimate of the supervising architect or superintendent of construction or contractor as provided in section 48-02-07.

48-02-09. Appropriations not to be diverted. No portion of any special appropriation for the erection of any building or improvement, or for the doing of any work, shall be drawn from the state treasury in advance of the work done or of materials furnished. The same shall be drawn only upon proper estimates thereof approved by the supervising agency or the state board of higher education, whichever is the governing body of the institution for which the building is being erected. No portion of any appropriation for any purpose shall be drawn from the treasury before it shall be required for the purpose for which it is made, and no appropriation which is or may be made for any purpose with respect to such construction or improvement shall be drawn or used for any other purpose until the construction or improvement for which such appropriation was made is fully completed and paid for.

48-02-10. Material produced in state given preference for use in public buildings. All boards or commissions purchasing material for use in making alterations, repairs, or additions, or in erecting new buildings, and all contractors making such alterations, repairs, or additions, or erecting new buildings or improvements therewith or pertaining thereto, always, price and quality being equal or better, shall purchase materials manufactured or produced within this state and, next, purchase such as have been manufactured or produced in part in North Dakota.

48-02-10.1. Advertising for bids. Advertisement for bids for such materials as are produced in North Dakota must be made in accordance with chapter 48-01.1, and may be included as a part of any advertisement for other items of the improvement. Each bid for furnishing materials produced in this state must contain the bidder's certificate as to where the product is found, produced, or manufactured in this state.

48-02-10.2. Opening bids, award of contracts, preference for native products. At the time and place specified in the notice the governing body shall open publicly and read aloud all bids received and may reject all bids or award the contract to the lowest and best bidder. If there be one or more bids for furnishing materials, products, and supplies which are found, produced, or manufactured within the state of North Dakota from native natural resources, the lowest of such bids shall be preferred over any bids for furnishing such materials, products, and

supplies which are not found, produced, or manufactured in North Dakota from native natural resources, unless the accepting of such lowest bid would result in the furnishing of material which could not be supplied in sufficient quantities to meet the needs of the purchaser or of a quality which is not at least equal to out-of-state products when tested by recognized national standards of the industry, in which the producer of the material offered is engaged, and if such North Dakota products are not higher in price than the non-North Dakota product, or not priced inconsistent with the value thereof. If the bid of the North Dakota supplier is rejected as not being of quality at least equal to out-of-state products, the reason why such North Dakota materials, products, and supplies are not reasonably equal to the out-of-state products under recognized standards of the industry shall be reduced to writing, made a matter of record, and be furnished to the North Dakota bidders.

48-02-10.3. Violations - Remedy. Any contract entered into or carried out in violation of the provisions of sections 48-02-10, 48-02-10.1, and 48-02-10.2 shall be void to the full extent of its provisions relating to North Dakota products and any such contract or purchase order shall be unenforceable in any court.

Any person who shall have submitted a bid shall have the right to maintain an action in equity to prevent the violation of the terms of sections 48-02-10, 48-02-10.1, and 48-02-10.2 within fifteen days after the letting of the contract.

48-02-11. Specified brands, marks, names, or patented articles not to be specified. The governing board, in specifying materials to be used in or about any work mentioned in this chapter, or in plans or specifications therefor, shall not ask for bids for any article of a specified or copyrighted brand or name, the product of any one manufacturer, nor any patented apparatus or appliance when such requirement will prevent proper competition, unless such specifications also shall ask for bids on other similar articles of equal value, utility, and merit.

48-02-12. Officers must not be interested in contract. No governing board, nor any member, employee, or appointee thereof, shall be pecuniarily interested or concerned directly or indirectly in any public contract, either verbal or written, that may be entered into by any such board or officer.

48-02-13. Architects and engineers - Duties. The governing body shall employ the architect or engineer furnishing the plans as provided in this chapter, or some other qualified person to provide construction administration and construction observation services for which the plans and specifications are prepared, as provided by section 48-01.1-04. The architect or engineer shall see that such contractor performs the work in compliance with the plans and specifications. The architect or engineer is entitled to receive a reasonable compensation to be fixed by the governing body. The duties imposed and powers conferred upon the governing body by this chapter apply to any successor to the governing body.

48-02-14. Retention of money on public contracts. Repealed by S.L. 1959, ch. 341, § 2.

48-02-15. Claim for work or improvement - Suit on contractor's bond. Any person who has furnished labor or material for any work or improvement for this state, any of its departments, or any school district, city, county, or township in the state in respect of which a bond is furnished under this chapter and who has not been paid in full within ninety days after completion of the contribution of labor or materials, may sue on the bond for the amount unpaid at the time of institution of suit. However, any person having a direct contractual relationship with a subcontractor, but no contractual relationship with the contractor furnishing the bond, does not have a claim for relief upon the bond unless that person has given written notice to the contractor, within ninety days from the date on which the person completed the contribution, stating with substantial accuracy the amount claimed and the name of the person for whom the contribution was performed. Each notice must be served by registered mail, postage prepaid, in an envelope addressed to the contractor at any place the contractor maintains an office, conducts business, or has a residence.

The contracting body and the agent in charge of its office are authorized and directed to furnish a certified copy of the bond and the contract for which it was given to anyone making an application therefor who submits an affidavit that either the person has supplied labor or materials for such work or improvement and that payment has not been made, or that the person is being sued on the bond. Applicants shall pay the actual cost of the preparation of the certified copy of the bond and the contract. The certified copy of the bond is prima facie evidence of the contents, execution, and delivery of the original.

48-02-16. Contents of notice to subcontractors - Number of publications. Repealed by S.L. 1973, ch. 375, § 3.

48-02-17. Claims - When barred as liens against contractor and surety. All claims for any labor, material, or supplies furnished for improvements, upon which suit is not commenced within one year after completion and acceptance of the project, shall be barred as liens or claims against the contractor and the contractor's surety. No action upon any such claim so barred shall be maintained nor any right of setoff or counterclaim thereon enforced in any court in this state against the state or contractor or the contractor's surety. Nothing in this chapter in any manner shall bar the right of any person who has furnished labor, supplies, or material to any subcontractor to enforce the same against the subcontractor.

48-02-18. Statement of legislative intent on design of public buildings. Repealed by S.L. 1973, ch. 376, § 2.

48-02-19. Public buildings and facilities - Statement of compliance with accessibility guidelines. State agencies and governing bodies of political subdivisions shall require a statement from any person preparing the plans and specifications for a public building or facility that, in the professional judgment of that person, the plans and specifications are in conformance with the Americans with Disabilities Act accessibility guidelines for buildings and facilities as contained in the appendix to title 28, Code of Federal Regulations, part 36 [28 CFR 36], subject to the exception stated in section 54-21.3-04.1.

48-02-20. Authorization of expansion of building projects by legislative assembly or budget section. Notwithstanding any other provision of law, a state agency or institution may not significantly change or expand a building construction project beyond what has been approved by the legislative assembly unless the legislative assembly, or the budget section of the legislative council if the legislative assembly is not in session, approves the change or expansion of the project or any additional expenditure for the project. For the purposes of this section, a significant change or expansion includes the construction of an addition to a building, including skywalks or other type of enclosed walkway, or any other substantial increase in the area of the building, but does not include the construction of building entrances and stairwells.

48-02-21. Public buildings - Directed surety bonds prohibited. A governing body may not require any person required to provide a surety bond under this title to furnish financial data to or obtain a surety bond from a specified insurance or surety company or insurance producer.